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ILLINOIS BELL TELEPHONE COMPANY	)	
	)	
Annual Rate Filing Pursuant	)	Docket No. 00-0260
To Commission Order in	)	Re-Opening
ICC Docket No. 92-0448/93-0239	)	

**INITIAL COMMENTS OF THE CITIZENS UTILITY BOARD AND**  
**THE PEOPLE OF THE STATE OF ILLINOIS**  
**ON REOPENING**

The Citizens Utility Board ("CUB"), through its attorney; and the People of the State of Illinois ("the People"), *ex. rel.* James E. Ryan (collectively referred to as CUB/AG) hereby submit their Comments on Reopening to the Illinois Commerce Commission ("the Commission" or "ICC") in the above-captioned docket on the issue of whether Illinois Bell Telephone Company ("IBT", Illinois Bell" or "the Company") should pay for all costs and expenses associated with the participation of Barrington Wellesley Group ("BWG") in ICC Docket No. 01-0128 (*Illinois Commerce Commission, On Its Own Motion v. Illinois Bell Telephone Company*).

**I. Background**

In ICC Docket No. 98-0555, which addressed the merger of SBC and Ameritech, the Commission ordered IBT to track its share of all actual merger-related savings and costs from the date of merger forward, and submit that information as part of its annual filings on April 1 of

each year, until such time as an updated price cap formula is developed in Docket No. 98-0252. Merger Order at 149. In addition, the Commission concluded that it shall retain, “at the Joint Applicants expense, a third party auditor, which may be a public accounting firm to develop and establish accounting standards to assist the Commission in identifying such costs and savings and to assist the Commission in tracking and determining the amount of such costs and savings.” Id. The Commission further noted, “Any such auditor shall report to and be governed by the directives of the Commission.” Id.

In its Order in IBT’s 2000 Annual Filing docket, the Commission concluded that rather than utilize the annual filing procedure for purposes of litigating merger savings, a separate docket would be a more appropriate mechanism to review merger-related savings. ICC Docket No. 00-0260, Order of June 21, 2000, Finding 8. Accordingly, ICC Docket No. 01-0128 was initiated earlier this year for purpose of litigating the development of accounting standards and the appropriate amount of merger-related savings and costs for the last three months of 1999. BWG, a third party auditor filed its 1999 audit as testimony in ICC Docket No. 01-0128, and identified accounting standards and issues that the Commission needed to address in order for the auditors to fairly and accurately audit merger costs and savings.

Although SBC/Ameritech paid BWG’s costs and expenses associated with performing the audit at issue in Docket No. 01-0128, SBC/Ameritech recently declined to pay the costs and expenses associated with BWG’s participation in that docket. Accordingly, Staff filed a Motion to Stay the proceedings in Docket No. 01-0128, and the Commission voted to re-open this docket

in order to consider whether the Commission should order SBC/Ameritech to pay for the costs and expenses of BWG to participate in Docket No. 01-0128.

**I. The Commission's Orders in the Merger Docket and Last Year's Annual Filing Docket Require Illinois Bell To Cover All BWG Costs And Expenses Associated With Litigating The Establishment of Merger-Related Auditing Standards and Net Savings Amounts.**

The Commission's conclusion in the Merger Docket that it would retain a third-party auditor "at the Joint Applicants' expense" for purposes of developing auditing standards and assisting it in the task of calculating net merger savings was unequivocal that Illinois Bell should pay the costs associated with that task. Merger Order at 149. The Commission described the role of the auditor as "to assist the Commission in identifying such costs and savings and to assist the Commission in tracking and determining the amount of such costs and savings." The Commission further provided that the auditor shall "be governed by the directives of the Commission." This broad language, adopted as part of the conditions under which the merger between SBC and Ameritech would be approved, in no way limits IBT's responsibility for paying the auditor's costs and expenses to simply the audit itself. Merger Order at 149.

The language quoted above necessarily encompasses the task of presenting findings to the Commission (e.g. in testimony). The task of "assisting the Commission in identifying such costs and savings and to assist the Commission in tracking and determining the amount of such costs and savings" requires that the Commission, its Staff and interested parties have the opportunity to review and address the auditor's conclusions. Merger Order at 149.

In the first IBT Annual Filing docket following the merger, the Commission concluded that a separate docket to address merger audit issues was required. The Commission stated:

"CUB/AG correctly acknowledge that the procedural framework established for annual filing dockets does not permit parties the opportunity to present evidence on the issue of the calculation of merger related savings. The calculation of merger related savings is no small task. As CUB/AG recognizes, the gargantuan task of calculating cost and savings figures involves the difficult and time-consuming process of establishing accounting standards and sifting through the accounting records of the newly merger company. A task of this magnitude is ill suited for an annual filing docket wherein initial filings occur on or before April 1 of each year and wherein an order must be entered by July 1 of each year.

To require that this docket remain open until the issue of merger related costs or savings is ultimately resolved is not practical. What is appropriate is that upon completion of the independent audit, this Commission shall open an separate proceeding in accordance with the 'contested case' provisions of the Illinois Administrative Procedures Act. 5 ILCS 100 1/1 et seq. ... [to] ensure that the due process concerns of both CUB/AG and IBT are properly addressed. CUB/AG, Staff, IBT and other intervenors will have the opportunity to fully explore the accounting standards developed in the independent audit, conduct discovery, present and cross-examine witnesses at a hearing, and submit briefs to the Commission.

Finally, by addressing merger related savings in a separate docket, IBT, Staff, CUB/AG and other intervenors will retain the ability to have an expedited review of traditional annual rate filing issues in this annual filing docket.

ICC Docket 00-0260, Order at 9 (June 27, 2000). Further, IBT supported the establishment of a separate docket rather than a second phase to the annual rate filing so that the annual rate filing could remain an expedited review and not be complicated by merger audit issues. See *id.* at 9. See also ICC Docket 00-0260, Reply Comments of Illinois Bell Telephone Company, at 8-10 (relevant excerpt attached as exhibit A). It is disingenuous for IBT to propose a separate docket to review the merger audit, and then argue that the separate docket somehow relieves it of its pre-existing obligation to pay the auditor's expenses.

IBT's apparent refusal to cover BWG's costs and expenses in the litigation of Docket 01-0128 is not supported by the Merger Order, the Order in Docket 00-0260, or IBT's own position

in Docket 00-0260. While CUB and the AG believe these orders speak for themselves, the Commission's Order on Reopening should unequivocally clarify that IBT shall be required to assume all costs associated with the auditor's role in assisting the Commission in identifying, tracking and calculating merger-related costs and savings, in accordance with the directive in the Merger Order, including all litigation expenses associated with the review or defense of the audit.

### **III. Commission Precedent Necessitates IBT Paying For *All* of BWG's Costs and Expenses In Docket No. 01-0128.**

In addition to the clear directive provided by the Commission in the Merger Order that IBT pay for BWG's role in assisting the Commission in identifying, tracking and calculating merger-related costs and savings, past practice with respect to utility audits necessitates IBT assuming responsibility for all costs associated with the auditor's work in Docket No. 01-0128. For example, in ICC Docket No. 92-0448/89-0033, the Company paid for all costs associated with a management audit ordered by the Commission and in fact included the entire expense in the test year operating income statement. The Commission concluded in its Order in that docket that the costs borne by Illinois Bell should be amortized over a five-year period – the projected life of the rates – for purposes of establishing the Company's going-forward rates under the price cap plan. The point here is that the Company listed as an expense all costs associated with the Commission-ordered management audit, and while the Commission normalized the expense for test year purposes, it in no way disputed the appropriateness of the Company covering all of the audit-related costs.

In sum, past Commission practice supports assigning all costs associated with litigating the establishment of merger-related costs and savings with IBT.

**WHEREFORE**, the Citizens Utility Board and the People of the State of Illinois urge the Examiner and the Commission to enter an Order on Rehearing that orders Illinois Bell Telephone Company to pay all costs and expenses associated with BWG's audit and presentation of evidence in ICC Docket No. 01-0128.

Respectfully submitted,

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April 27, 2001

Exhibit A  
CUB/AG Initial Comments  
Docket 00-0260 Reopening

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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Illinois Bell Telephone Company	)	
	)	
	)	Docket No. 00-0260
Annual Rate Filing for	)	
Noncompetitive Services Under an	)	
Alternative Form of Regulation	)	

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REPLY COMMENTS OF ILLINOIS BELL TELEPHONE COMPANY

Illinois Bell Telephone Company ("Ameritech Illinois" or "the Company"), by its attorney, hereby files its reply to the Comments filed by the Staff of the Illinois Commerce Commission ("Staff") and the Comments of the State of Illinois and the Citizens Utility Board ("AG/CUB"). No other party has filed comments on Ameritech Illinois' annual rate filing.

I. Gross Domestic Product Price Index (GDPPPI)

The Commission correctly concluded in last year's annual filing proceeding (Docket 99-0185) that Ameritech Illinois correctly reflected a restatement of the Gross Domestic Product Price Index ("GDPPPI") published by the Bureau of Economic Analysis ("BEA") in the calculation of the year-over-year change in the GDPPPI. In doing so, the Commission rejected Staff's position that the BEA's restatement of the GDPPPI should be ignored and Staff's contention that the ending point for a given year's GDPPPI calculation must necessarily be the starting point for the current year's calculation. Order Docket 99-0185, p. 5 (June 30, 1999).

In Staff's Comments filed this year, Staff accepts Ameritech Illinois' calculation of the Price Cap Index ("PCI") including the Company's calculation of the year-over-year change in the GDPPPI. In performing this calculation, Ameritech Illinois took into account the fact that the

way calling-per use have such a competitive counterpart, and the Docket 98-0860 wholesale rate cap commitment is therefore applicable.

**V. Service Quality**

In its Comments, CUB expressed a concern over not receiving an answer to two sub-parts to one of CUB's data requests. Ameritech Illinois has provided the response which demonstrates that Ameritech Illinois satisfies the service quality standard for installations within five days.<sup>2</sup>

**VI. Merger Related Costs and Savings**

In this proceeding, Ameritech Illinois has filed as Exhibit 9 an accounting of Ameritech Illinois' merger related costs and savings for the year ending December 31, 1999. Ameritech Illinois' filing is in compliance with the Commission's merger order in Docket 98-0555, which requires that merger related costs and savings information will continue to be provided in the Company's annual price cap filings until such time as an updated price cap formula has been developed in Docket 98-0252. Order, Docket 98-0555, p. 149 (Sept. 23, 1999); see also, Amendatory Order on Rehearing, Nov. 15, 1999 at p. 7. In that same order, the Commission decided to retain a third-party auditor "to develop and establish accounting standards to assist the Commission" in identifying merger costs and savings. (Id.).

In their comments, AG/CUB claimed that they are unable to obtain workpapers related to the calculation of merger savings and costs. In addition, they complain at length about the absence of a hearing in this proceeding during which they can present and cross-examine witnesses concerning the calculation of merger savings and costs and the audit thereof.

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<sup>2</sup> Specifically, Ameritech Illinois' response to the CUB data request describes Ameritech Illinois' prior historical practice of tracking information with respect to the installation-within-5-day indicator. Ameritech Illinois indicates in its response that in preparing its answer, it noted that its 1999 results needed to be re-stated due to the inconsistencies with the standard historical practice. However, based on the re-stated results, Ameritech Illinois still satisfies this service quality indicator with 96.34% of installations occurring within the standard five day interval. Ameritech Illinois will shortly be refiling re-stated results with the Commission. Attachment 5 is a copy of Ameritech Illinois' response to the relevant sub-parts of the CUB data request.



AG/CUB go on to belittle the annual price cap filing as a "ministerial proceeding" which requires the Commission and hearing examiners to "exercise...little judgment or discretion..." Finally, AG/CUB propose that given the fact that the issues in this case must be resolved by July 1, 2000, that a second phase of this docket be created which would allow a "full hearing on the examination and calculation of merger costs and savings." AG/CUB Comments, pp. 6-19.

With respect to the level of detail provided by the Company to CUB and other parties, Ameritech Illinois has responded to discovery requests related to the creation of Exhibit 9. Further, Ameritech Illinois has offered to make workpapers related to Exhibit 9 available for inspection and copying. CUB has yet to respond to this offer.

Further, and more importantly, AG/CUB's concerns related to reviewing merger related costs and savings are essentially premature. The Commission-initiated audit, which is being conducted by the firm of Barrington-Wellesley Group, Inc., is not expected to be completed and filed with the Commission until September, 2000. So while AG/CUB complain in 13 pages of Comments (pp. 6-19) about the lack of opportunity to examine witnesses related to the audit, their concern is obviously premature, a fact which AG/CUB curiously omit.

Further, AG/CUB at the end of their comments clearly acknowledge the need for the Commission to complete its review of the Annual Filing so that rates can go in effect on or about July 1, 2000. (CUB Comments, p. 19). Accordingly, AG/CUB's pleading ultimately recognizes the fact that it is simply neither practical nor timely to conduct any kind of evidentiary hearing on merger costs and savings prior to that time.

With respect to AG/CUB's proposal that this Docket be extended into a Phase II, Ameritech Illinois does not agree with this suggestion. First, the annual filing proceeding is not well suited to the type of review AG/CUB envision. Instead, this proceeding has traditionally

been a "paper only" proceeding given the three month timeframe for completing the docket. Second, AG/CUB fail to recognize that the mechanism for sharing merger savings with retail customers and carriers will be done through updated cost studies and an allocation of savings between IXCs and end users. (*Id.* p. 149). This mechanism fall outside this filing. Finally, a Phase II proceeding could remain open indefinitely and ultimately interfere with the expedited review of future annual rate filings required by the annual July 1 deadline.

For these reasons, any proceeding examining the auditors review of merger savings and costs should be a separate one. As discussed above, the results of the audit will be filed by the Commission's independent auditor sometime in September, 2000. At such time, Ameritech Illinois does not (and would not) oppose the Commission opening and conducting a separate proceeding in accordance with the "contested case" provisions of the Illinois Administrative Procedure Act, 5 ILCS 100 1/1 et seq., which would provide AG/ CUB, and other parties with the opportunity to, among other things, review the results of the audit, conduct discovery, present and cross-examine witnesses at a hearing, and submit briefs to the Commission regarding the calculation of net savings issue based on an evidentiary record. Alternatively, such review could reasonably take place in Docket 98-0252, Ameritech Illinois' alternative regulation review proceeding. The Commission has already identified this proceeding as the forum for developing an updated price cap formula, after the development of which merger costs and savings information will no longer be provided in the Company's annual filing proceedings. (Order, Docket 98-0555, p. 149). To the extent that the results of a review of the audit would necessitate changes in Ameritech Illinois' filed rates, Ameritech Illinois would have no opposition to making those rate changes retroactive to the applicable annual rate filing date (e.g., July 1, 2000).

**VII. Conclusion**

For all of the above reasons, the Commission should accept Ameritech Illinois year 2000 Annual Rate Filing, as modified herein with respect to wholesale rates and, its calculation of the change to the GDPPI.

Respectfully submitted,

By: 

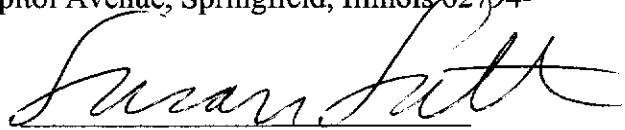
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STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY )	
Annual Rate Filing Pursuant to Commission Order )	
in ICC Docket No. 92-0448/93-0239. )	ICC Docket No. 00-0260
	Re-Opening

**NOTICE OF FILING**

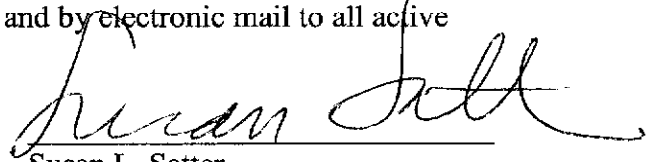
**PLEASE TAKE NOTICE** that on this date, April 27, 2001, we have filed with the Chief Clerk of Illinois Commerce Commission the enclosed Initial Comments of the Citizens Utility Board and the People of the State Of Illinois on Re-Opening via e-docket to the Chief Clerk of the Illinois Commerce Commission at 527 East Capitol Avenue, Springfield, Illinois 62794-9280.



Susan L. Satter  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, Susan L. Satter, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on April 27, 2001, and by electronic mail to all active parties.



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